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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/575,781

04/14/2006

Marcus Eh

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1609 7590 06/09/2009

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EXAMINER

BROWN, COURTNEY A

ART UNIT

PAPER NUMBER

1616

MAIL DATE

DELIVERY MODE

06/09/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/575,781	<b>Applicant(s)</b> EH ET AL.	
	<b>Examiner</b> COURTNEY BROWN	<b>Art Unit</b> 1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05 December 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) 8-14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Acknowledgement of Receipt/Status of Claims***

This Office Action is in response to the amendment filed December 5, 2008. Claims **1-14** are pending in the application. Claim 1 has been amended. Claims **8-14** have been withdrawn as being directed to a non-elected invention. Claims **1-7** are being examined for patentability.

Rejections not reiterated from the previous Office Action are hereby withdrawn. The following rejections and/or objections are either reiterated or newly applied. They constitute the complete set of rejections and/or objections presently being applied to the instant application.

### **New Rejection(s) Necessitated by the Amendment filed on December 5,**

**2008**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims **1-3** are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter

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which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 1 is drawn to a method for the release of a fragrance having the step of producing a formulation which is comprised of the compound of instant formula I and a medium that is **sour** and oxidative. Page 5, lines 12-18 of the instant application's specification discloses that the compounds of instant formula (I) have a good storage stability in (a) **acidic, oxidative** media and (b) in **alkaline** media. However, the specification is silent on producing a formulation which is comprised of the compound of instant formula I in a medium that is **sour** and oxidative. The new matter of claim 1 is producing a formulation of instant formula I in a **sour** medium. Claims 2 and 3 are rejected because they depend on rejected claim 1.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

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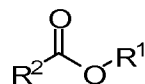
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

**Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Paget et al. (AU-B-71940/94) in view of Anderson et al. (US Patent 6,479,682 B1).**

***Applicant's Invention***

Applicant claims a method for the release of a fragrance having the steps: A.) providing a compound of formula I;



**Compound of formula I**

B.) producing a formulation which comprises the compound of formula I and a medium, such that the compound of formula I is stable in the formulation, wherein said medium is

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sour and oxidative and has a water content of less than or equal to 10 wt.% relative to the total mass of the medium; and

C.) treating said formulation such that the compound of formula I disintegrates and the fragrance is released.

***Determination of the scope and the content of the prior art  
(MPEP 2141.01)***

Paget et al. teach a process for perfuming fabrics washed in the presence of a lipase-containing detergent (alkaline medium, raising the water content of the formulation to > 10 wt% of instant application) wherein said process is characterized in that said detergent contains a compound (compound of instant formula I) wherein  $R^2=Y$  which represents a C7-C24 linear or branched or unsaturated alkyl radical and  $R^1=R$  which represents an alkylidene radical derived from a fragrant aldehyde (i.e., a radical of the enol form of an aldehyde of instant application) or an alkylidene radical derived from a fragrant ketone with 5-18 C atoms (i.e., the radical of a ketone having 10 or more C atoms of instant application) (see claims 1-7 of Paget et al.). Paget et al. teach that the term "fragrant aldehyde or ketone" is any aldehyde or ketone which is capable of imparting an odor to fabrics or textiles upon the process of washing (see page 3, lines 13-20).

***Ascertainment of the difference between the prior art and the claims  
(MPEP 2141.02)***

The difference between the invention of the instant application and that of Paget et al. is that the instant invention claim a method of producing a formulation which is comprised the compound of instant formula I in a medium that is sour (i.e., acidic) and oxidative and has a water content of less than or equal to 10 wt% relative to the total mass of the medium as opposed to being silent. For this reason, the teaching of Anderson et al. is joined. Anderson et al. teach methods and compositions to provide compounds which are precursors for organoleptic compounds such as fragrance or masking agents (column 1, lines 13-16) that are cleaved under different activating conditions and are stable under transport and storage conditions (column 1, lines 51-57). Said activating conditions are taught to mean those conditions which lead to cleavage of compounds and the formation of "active" i.e., organoleptic agents wherein said conditions comprise **acidic** or alkaline pH-values (column 3, lines 7-15). Anderson et al. teach the use of precursor compounds which generate aldehyde and ketone fragrant compounds such as decanal and cavone (columns 6-8) as disclosed on pages 10 and 11 of the instant application. Anderson et al. additionally teach the aforementioned precursor compound could be an ester (column 5, lines 50-55 and examples 1,2,5-21) and employed as fragrance precursors in a variety of compositions, including, for example, personal care products, laundry products, cleaning compositions, pet care products and environment scents such as air fresheners, (column 5, lines 56-60) underarm deodorants or antiperspirants or other deodorants contacting the body, hand lotions, baby powders, baby lotions, ointments, foot products,

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facial cleansers, body wipes, facial make-up, colognes, after-shave lotions, shaving creams, etc. (column 11, lines 39-48) .

Regarding the amount of water present in the instant sour and oxidative medium, Anderson et al. teach water in amounts less than 10% . This includes amounts all the way to 0% (see example 55 a and b, column 23 bridging to column 24, lines 1-44). One of ordinary skill in the art would have been motivated to utilize water in low amounts based on the teachings of Anderson et al. It would have been obvious to one of ordinary skill in the art at the time of the invention to engage in routine experimentation to determine optimal or workable ranges for water that produce expected results. Where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation. **In re Aller, 220 F. 2d 454, 105 USPQ 233 (CCPA 1955).**

***Finding of prima facie obviousness***

***Rationale and Motivation (MPEP 2142-2143)***

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of the two cited references to arrive at a method for the release of a fragrance in a sour (i.e., acidic) and oxidative medium. One of ordinary skill in the art would have been motivated to make this combination with the expected benefit of having a method to provide fragrant precursors in more than one type of composition (i.e., acidic and basic) that can be used for an array of products.

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All the claimed elements were known in the prior art and one skilled in the art could have combined the methods as claimed using known elements with no change in their respective functions, and the combination would have yielded predictable results to one of ordinary skill in the art at the time of the instant invention.

Therefore, the claimed invention as a whole would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made because every element of the invention has been fairly suggested by the cited reference.

### ***Response to Arguments***

Applicant's arguments, filed December 5, 2008, with respect to the 103 rejection of claims 1-7 under 35 U.S.C. 103(a) as being unpatentable over Babler (US Patent 6,278,016 B1) have been considered but are moot in view of the new ground(s) of rejection.

The claims remain rejected.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR Only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electron Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Courtney Brown, whose telephone number is 571-270-3284. The examiner can normally be reached on Monday-Friday from 8 am to 4:30 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's Supervisor, Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Courtney A. Brown  
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Group Art Unit 1616

*/Mina Haghighatian/  
Primary Examiner, Art Unit 1616*